

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

ARIZONA HALL, JR.,

Petitioner,

v.

CHRIS KOSTER,

Respondent,

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No. 4:16-CV-1739 CDP

MEMORANDUM AND ORDER

This matter is before me on petitioner’s “Motion for Disqualification of Presiding Judge.” Petitioner asserts that I have conspired with another judge “to circumvent hearing the constitutional violations asserted in [his] petition[s] for writ of habeas corpus.” The assertion is baseless.

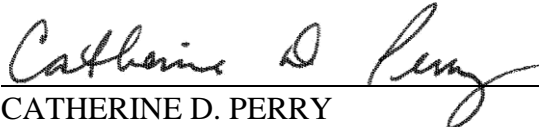
Section 455(a) provides that a judge “shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” Impartiality is judged objectively: “Would the average person, knowing the facts alleged by the part[y] seeking disqualification, question the Judge’s impartiality, and, if so, would the question be reasonable?” *O’Bannon v. Union Pac. R.R. Co.*, 169 F.3d 1088, 1091 (8th Cir. 1999). Stated differently, the test is “whether the judge’s impartiality might reasonably be questioned by the average person on the street who knows all the relevant facts of a case.” *Moran v. Clarke*, 296 F.3d 638, 648 (8th Cir. 2002) (quoting *In re Kan. Pub. Employees Ret. Sys.*, 85 F.3d 1353, 1358 (8th Cir. 1996)). If this test is not satisfied, judges have a duty to decide the cases and controversies which come before them. *See Perkins v. Spivey*, 911 F.2d 22, 28 (8th Cir. 1990); *see also Cheney v. U.S. Dist. Ct.*, 541 U.S. 913, 916 (2004) (memorandum of Scalia, J.). “Frivolous and improperly based suggestions that a judge

recuse should be firmly declined. *Maier v. Orr*, 758 F.2d 1578, 1583 (9th Cir. 1985). In this case, petitioner's motion is both frivolous and improperly based. Therefore, it is denied.

Accordingly,

IT IS HEREBY ORDERED that petitioner's "Motion for Disqualification of Presiding Judge" [ECF No. 3] is **DENIED**.

Dated this 5th day of December, 2016.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE